Supreme Court, U.S.
FILED
051668 JUN 27 2006
OFFICE OF THE CLERK

No. _____

In the
Supreme Court of the United States

JANINE L. BALLY,

Petitioner,

v.

BANK ONE, N.A.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

JANINE L. BALLY
Pro Se

126 INNER CT.
NEW LENOX, IL 60451
(815) 485-8973

Becker Gallagher Legal Publishing, Inc. 800.890.5001

QUESTIONS PRESENTED

1. Whether a Motion to Disqualify All Judges of a Circuit, when brought in good faith with an accompanying affidavit that specifies rational reasons for disqualification of all judges of a circuit, requires that a Judge from outside of the circuit hear the motion to disqualify so as to comply with the statutory requirement.

2. Whether a judge must recuse him/herself because an employer/employee relationship in which he is either the employer or employee in order to comply with Supreme Court Rules and to avoid the appearance of impropriety.

3. Whether the primary goal in ruling on a Petition to Set Aside a Judgement is to achieve substantial justice and whether achievement of that goal is subject to or dependent upon due diligence or a meritorious defense.

PARTIES TO PROCEEDINGS

Petitioner is the 100% beneficiary to First Midwest Bank Land Trust #6292 with the sole right to control the direction of the use of the subject property.

Respondent is Bank One, N.A., a U.S. Banking institution, which has recently been acquired by J.P.Morgan/Chase. Respondent is now known simply as Chase.

RULE 29.6 STATEMENT

Petitioner is a U.S. citizen, sui juris, residing in the Village of New Lenox, Will County, State of Illinois.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Janine L. Bally, respectfully petitions for a writ of certiorari to review the pre trial procedures employed below as well as the review of a summary order of the 3rd District Appellate Court of Illinois affirming the decision and order of the 12th Judicial Circuit of Will Co., Illinois granting Bank One's 735 ILCS 5/2-1401 Petition and Motion to Amend the Judgment Nunc Pro Tunc and denying Petitioner's 735 ILCS 5/2-1401 Petition to Vacate the Order of Default and Set Aside Judgment of Foreclosure and Sale by a Judge having no jurisdiction to enter the order because of the 12th Judicial Circuit's deprivation to Petitioner's right to have her Motion to Disqualify All Judges of the 12th Judicial Circuit of Will Co., Il. heard by a Judge From another Jurisdiction pursuant to 735 ILCS 5/2-1001 a (3) iii.

OPINIONS BELOW

No opinions were given from any of the state courts. All decisions were by the circuit court's decision and order or summary order by the 3rd District Appellate Court. The denial for certiorari by the Illinois Supreme Court did not give reasons for the denial.

JURISDICTION

The Supreme Court of Illinois denied Petitioners' Appeal as of Right or Leave to Appeal on March 29, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

RELEVANT STATUTORY PROVISIONS

735 ILCS 5/2-1001 (a) (3) iii

735 ILCS 5/2-1401

735 ILCS 5/2-616

735 ILCS 5/15 1603 c (1)

CONSTITUTIONAL PROVISIONS

U.S. Constitution 14th Amendment

U.S. Constitution 5th Amendment

STATEMENT OF THE CASE

Related and Parallel Litigation

This Petitioner was a co-petitioner in a petition for writ of certiorari from the U.S. Supreme Court in 2005 for relief from an order of summary judgment entered in favor of Will Co., Il. by the U.S. District Court of Northern Illinois in a petition captioned as Schneider v. Will Co., Il. 05-317. That case focused on the irrational animus on the part of Will Co. government at all levels in denying Petitioner's attempt to establish a B&B that accommodated disabled and handicapped people. That case originated in the U.S. District Court of Northern Illinois' Eastern Division in Chicago. This Court denied certiorari October 3, 2005. That case involved Petitioners request for relief from the federal courts from Will County's deprivation to several of Petitioner's statutory and constitutional rights including, enactment of an ultra vires and unconstitutional ordinance, due process of law, as well as the right to a statutory automatic stay to her timely filed appeal to Will Co.'s administrative decision under Illinois' Administrative Review Law, together with several other statutory rights. In last year's Petition for Ceritiorari

Petitioners focused on the County of Will's failure to have the appearance of the County in a legally cognizable form entered by the Will Co. State's Attorney affirmatively in the court record. The petition for the writ asked this Court to declare all rulings and pleadings made by the unauthorized, non-court appointed, private attorneys that had entered their appearances in that case null and void ab initio because of the State's Attorney of Will County's failure to enter his appearance into the court record as required by State Statutes 55 ILCS 5/3-9004 (a) 4 or 55 ILCS 5/3-9008. The federal courts refused to provide the relief requested in accordance with Federal Rule of Civil Procedure 17 (b) that requires the courts to follow the law of the state in determining the capacity of a party to be represented. After this court denied certiorari, Petitioners filed a Federal Rule of Civil Procedure Rule 60 (b) 4 Motion requesting that the U.S. District Court enter an order declaring the County's Judgment null and void because of the failure of the Will Co. State's Attorney to have his appearance appear affirmatively in the court record. The District Court denied the motion without explanation and denied Petitioner's motion for re-consideration. Petitioner requested the 7th Circuit Court of Appeals to Recall the Mandate for determination. The Appellate Court denied the motion and threatened sanctions.

Will County government at all levels, from the administrative level through the County Board level, have consistently and persistently deprived the Petitioner of her right to use and maintain the subject property since August of 1999 without constitutional or statutory authority to do so. In fact, Illinois statute 55 ILCS 5/5 12011 prohibits the County's exercise of enforcement powers depriving the owner of existing residential property from its occupancy without a restraining order from state court. The County's actions and inactions have deprived the Petitioner of her right to use the

property as a residence without asking the local Circuit Court for a restraining order under the procedures required by 55 ILCS 5.5-12017. The County's actions and inactions are rooted in an irrational animus against the Petitioner. The state statutes are clear and unambiguous in their restrictions against the County's issue of a Stop Work Order and Certificate of Non-occupancy without a local circuit court's restraining order pursuant to 55 ILCS 5/5-12017. The County's disregard for the statutory limitations in their exercise of police zoning powers has deprived the Petitioner of her occupancy and her tenant's occupancy of the property without due process of law. When Petitioner's tenant brought an action in Will Co. Circuit Court to have the certificate of non-occupancy and stop work order declared invalid, the Circuit Court dismissed the action and the Appellate Court affirmed on the basis that the complaint failed to state a cause of action. Because of the County's actions and inactions, Petitioner has found herself in a morass of litigation all without a fair and impartial jurist to preside over proceedings.

FACTS RELEVANT TO THE INSTANT PETITION

Petitioner asks that this Court provide the relief denied by and through a grant of her Petition for Certiorari. Petitioner, while having paid on the subject property for 2.5 years without being able to use the property because of the County's unauthorized actions, had a palpable and distinct injury traceable to the County's unauthorized actions.

First Chicago/NBD Bank, the originating lender, agreed to lend to the Petitioner $67,500.00 at closing and escrow $20,000.00 with a local title company for their disbursement. Within a few months of closing on the loan Bank One bought and merged First Chicago/NBD Bank into their bank and closed the construction loan office that was to have disbursed

the remodeling loan funds to the local Title Company for their distribution. Bank One failed to fund the escrow account in the amount of $20,000.00 and failed to provide the Petitioner with a fully executed Construction Loan Agreement (hereafter CLA) that she had pre-signed and sent to First Chicago/NBD Bank prior to closing. At closing, Petitioner failed to notice that the CLA was not included in the closing documents. The agreement to lend was predicated on the additional disbursement of the $20,000.00 before monthly mortgage payments were to begin. That condition precedent would never be fulfilled by Bank One. The Bank concealed the loss of the fully executed CLA throughout the 2.5 years that Petitioner had paid periodic interest payments on the property from March of 1999 through August of 2001. The Bank, without notice of intent to foreclose, filed a foreclosure complaint. Petitioner's contractor had been assured by Bank personnel throughout the pendency of the foreclosure that the CLA would be sent to the Petitioner for her to append to her answer to the complaint in order to provide the court with comprehensive evidence of the full nature of the lending agreement. The Bank's foreclosure complaint failed to attach the CLA because, Petitioner would later surmise, that the Bank had lost the CLA. Instead of fully informing the Court of the full nature of the lending agreement, the Bank prepared the complaint in foreclosure as though it were an everyday run of the mill foreclosure but only asked for a default amount of $67,500.00 plus interest accumulated and costs. In so doing, they failed to fully inform the Court of the entire nature of the agreement to lend. The Court entered Summary Judgment against Petitioner even though she informed the Court that the CLA was to arrive in the mail at anytime according to the Bank. When the Court entered judgment, they entered judgment not on the subject property but, on a property located in a downstate Illinois County in accordance with the documentation furnished to the Court by the Bank's

legal counsel. Only after the judgment had been entered had Petitioner discovered through an examination of the Clerk's file that the Bank had filed an affidavit of a Lost Note and Mortgage. Petitioner immediately concluded that she had been duped into believing that the CLA was going to be sent to her so that she could attach it to her answer to the complaint. However, the Court entered a judgment on a property found in a different county according to the legal description provided by Bank counsel and which is appended hereto. Thus, the judgment entered on October 4, 2002 was void as it failed to conform the state statutory requirements in failing to attach a valid legal description. In essence, the judgment was void as to the subject property.

Petitioner took an appeal, which, after full briefing, was dismissed by the 3rd District Appellate Court incorrectly alleging that Petitioner failed to file the Notice of Appeal timely. In that Appeal Petitioner did not inform the Appellate Court that the legal description did not describe the Petitioner's property. Petitioner only asked the Appellate Court to overturn the Order of Default entered as to the Land Trust. However, because of the Appellate Court's dismissal, the void judgment remained as entered by the court, on the wrong property.

Petitioner then filed a 735 ILCS 5/2-1401 petition in the Circuit Court of Will Co., Il .to vacate the order of default and set aside the judgment of foreclosure and to allow Petitioner's answer to the complaint of foreclosure be entered. Petitioner reasoned that since the judgment was void as to Petitioner's property, the court should have allowed Petitioner to answer the complaint pursuant to 735 ILCS 5/2-616. When Petitioner appeared before a new circuit judge (the original circuit judge was not retained at the previous general election) the judge refused to rule on the 2-1401 Petition until the Bank

brought a 2-1401 Petition to Amend the Judgment Nunc Pro Tunc that the original and different judge had entered almost 2 years previously. The judge delayed the ruling on Petitioner 2-1401 Petition and allowed the Bank to bring a Petition to Amend the Judgment nunc pro tunc.

All local attorneys declined to represent Petitioner because of the parallel litigation Petitioner had pending against Will Co. in the U.S. District Court. The threat to their careers and their other clients in the form of judicial retaliation discouraged any local attorney from representing the Petitioner or the Land Trust. Petitioner had represented herself throughout the litigation up to this point.

Petitioner then found a willing attorney from out of the County to represent her in the Petition to Set Aside the Judgment. This attorney would bring several motions to substitute multiple judges and would withdraw when it became apparent that the Will Co. Circuit was incapable of being unbiased and impartial in following the procedures of hearings on motions to substitute the presiding judges for cause. This propensity to deprive the Petitioner of her right to a fair hearing by a judge not named in her motions to disqualify would continue throughout these proceedings in several motions to disqualify for cause. Primarily, the animus on the part of the Circuit Court was rooted in the related and parallel litigation pending against the County in state and federal court.

After withdrawal of representation by her original 2-1401 attorney, Petitioner found another out-of-county attorney to represent her. This new attorney brought a Motion to Disqualify All Judges of the 12th Judicial Circuit together with a lengthy and specific affidavit specific as to the reasons why each individual full circuit judge and associate circuit judge

was disqualified under Illinois Supreme Court Rules and Judicial Canons. 735 ILCS 5/2-1001 a (3) iii requires a judge from a different jurisdiction to be appointed by the Illinois Supreme Court to hear a Motion to Disqualify All Judges of a Circuit. Petitioner was denied this process by the several rulings of several Will County 12th Judicial Circuit Judges. Importantly, no counter-affidavits contradicting any of the assertions in Petitioner's affidavit had been filed by any judge denying the assertions and no testimony by any judge denying the reasons stated in the Affidavit was had. Ultimately, the 2-1401 petitions would be determined by the original 12th Judicial Circuit Judge originally assigned to hear them. Summarily, the judge entered an order depriving Plaintiff of her right to amend the answer to the complaint pursuant to 735 ILCS 5/2 616 and to a trial on the amended answer while he simultaneously entered an order amending the Bank's void judgment nunc pro tunc.

This Petition for Writ of Certiorari is focused on the deprivation of Petitioner's right to have had her Motion to Disqualify All Judges of the 12th Judicial Circuit heard by a judge appointed by the Illinois Supreme Court as well as the invalidity of the Judgment of Foreclosure in this circumstance.

Should this Court fail to grant certiorari, Petitioner will lose her rights to her property without due process of law and be irreparably harmed in the process. This is because of Illinois statute 735 ILCS 5/15-1603 c (1) that provides that no court proceeding "shall toll the running of the period of redemption." The redemption period from the order amending the judgment nunc pro tunc in effect rendered redemption impossible because the entry of the order of judgment of foreclosure originally occurred October 4, 2002. The right of

redemption expired by law on January 4, 2003. Thus, redemption is impossible given the statutory provisions.

To ask the Bank for re-instatement of the mortgage loan in this case is an act of futility since the Bank has allied itself with Will Co. government to deprive the Petitioner of her property and its use and maintenance without due process of law by their actions. Additionally, the Bank has filed a Notice of Hearing of Confirmation of Sheriff's Sale and has notified the Petitioner that a Sheriff's Sale will occur on June 28, 2006. The Bank clearly has no intent of reformation of a mortgage loan agreement since it had never informed the Petitioner of its loss of the CLA, the original note and mortgage, and then, in good faith, sought a reformation of the agreement. Instead, the Bank kept this information completely concealed from the Petitioner until after the original entry of the judgment of foreclosure and sale when it filed the Affidavit of Loss of the Original Note and Mortgage without proper court notice being served upon the Petitioner. The Bank has used every available means within its power to deprive the Petitioner of her property. It would be futile to explore reinstatement as the Bank has demonstrated its intent to cause loss of right and title to the property.

Throughout the time in which the Bank (this Bank succeeded another Bank after its acquisition of the other bank immediately after Petitoner closed on the loan) has had the loan, there has not been any disclosure to either the Court or to the Petitioner of the Bank's loss of the CLA.

Petitioner is substantially aggrieved in the following ways:

Petitioner has been denied substantial justice and fairness.

1. Petitioner's 735 ILCS 5/2-1401 Petition to Vacate the Order of Default and Set Aside the Judgment had not been heard by a fair and unbiased judge and no proper hearing has been allowed or amended answer allowed while the Bank's Petition and Motion to Amend the Judgment nunc pro tunc has been allowed without a proper hearing which now permits the sale of the property.

735 ILCS 5/2-1001 is the statute by which a litigant may bring a motion to disqualify a judge based on any of several reasons. Provisions in the statute require a hearing by a judge not named in the affidavit supporting the motion, 735 ILCS 5/2-1001 a (3) iii. Herein, Petitioner's attorney brought a motion to disqualify all judges of the 12th Judicial Circuit. The statute requires a hearing by a judge from outside of Will Co. subsequent to an appointment by the Illinois Supreme Court. Various judges of the 12th Judicial Circuit denied the motion and refused to ask the Illinois Supreme Court to appoint a Judge to hear the motion to disqualify all judges of the circuit.

2. The Bank never fulfilled their agreement to lend by failing to fund the escrow account and provide the Petitioner with the fully executed construction loan agreement. The Bank concealed the loss of the fully executed CLA throughout the proceedings leading up to the entry of the void judgment by the original judge. The lending agreement was never fully performed by the Bank because of their failure fund the escrow account and failure to provide a CLA to the Petitioner in order to fulfill the condition precedent of fully funding the loan, disbursing those funds, which would have converted the remodeling loan into an end loan agreement with monthly mortgage payments.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. Conflict with decisions by the U.S. Supreme Court by the lower courts which ignored the primary goal of due process requiring strict adherence to the procedures which assure the litigant of a fair and impartial judge in order to do substantial justice.

Substantial justice is the doctrine that many courts have adopted as the primary goal to be achieved ruling on motions to set aside a judgment. Courts used to narrowly consider only the doctrines of meritorious defense and due diligence when deciding whether to set aside a judgment. Recently, Illinois courts have followed as its primary objective the doctrine of substantial justice without relying solely on whether there was a meritorious defense or due diligence on the litigant's part evident in the pleadings and court record. The Illinois Supreme Court held in *Smith v. Airoom, Inc.*, 499 N. E. 2d 1381, 114 Ill. 2d 209 (1986). The *Airoom* Court stated that "[t]he power to set aside a default and permit a defendant to have his day in court is based upon substantial principles of right and wrong and is to be exercised for the prevention of injury and [for the] furtherance of justice." *Airoom*, 499 N.E.2d at 1388. However, the underlying facts and manifest actions of the lower court clearly renders the decision in the lower court anything but substantially just. Here, the lower court ruled in the Bank's favor without any evidence of any sort that the judgment entered by a different judge 2 years earlier was anything but the judgment intended to be entered.

A core principle to due process is that the presiding judge must be impartial and unbiased and definitely not subject to an interest in the outcome. In *Tumey v. Ohio* (citations omitted), this Court held that when a judge cannot hold the balance of

impartiality true and even, that inability denies due process. The fact that several 12th Judicial Circuit judges as well as the 3rd District Court of Appeals had ruled that Petitioner's Motion to Disqualify All Judges of the 12th Judicial Circuit in effect had chosen to ignore the clear and unambiguous requirement by 735 ILCS 5/2-1001 a (3) iii that requires a hearing by a judge not named in the motion, is additional evidence of the errors and impartiality by both the 12th Judicial Circuit Judges and the 3rd District Court of Appeals.

The Illinois Supreme Court has held in *Girot v. Keith* (citations omitted),that any interest in an outcome of a ruling would disqualify a judge. This Court has similarly ruled *In re Murchison* (citations omitted) that "The impartiality guaranteed to litigants through the Due Process Clause adheres to a core principle: [No] man is permitted to try cases where he has an interest in the outcome." The interest that the lower court had in the outcome was the employer/employee relationship between himself and the County and his future ability to obtain a favorable review from the local bar association for future retention in the election process. Additionally, mooting related and parallel litigation by causing loss of right and title to the property is a persuasive reason to assist the County by ruling in the Bank's favor.

II. Substantial justice is a court's objective and primary goal that the lower courts failed to do when considering all the evidence, procedural missteps and findings.

The Circuit Court which allowed the Bank to amend their void judgment nunc pro tunc, in the same order disallowed the Petitioner's petition to set aside the judgment and allow her answer to be admitted into the record pursuant to 735 ILCS 5/2-616. Even though the Bank's judgment was clearly void as a matter of law, the lower Court disallowed the

Petitioner's answer to be admitted into the record and a resulting trial on the evidence had. The reason for these rulings was to deprive Petitioner any trial before an impartial trier of fact would have rendered a verdict in the Petitioner's favor as the evidence was overwhelmingly supported all that the Petitioner alleged in her 2-1401 petition.

Additional evidence that the Bank was concealing the loss of the CLA was in the court file when the Bank had filed their Affidavit of Lost Note and Mortgage that had been filed with court papers on October 4, 2002 (the date the Court entered judgment in favor of the Bank), the Bank having failed to provide this critical document to the Petitioner in advance of the court appearance. Petitioner only discovered the affidavit 2-3 weeks afterwards upon examination of the Court Clerk's case file. Only then did it occur to her that the CLA was also lost.

Beyond the Bank's concealment of the loss of the CLA and the Bank's failure to fund the loan, as well as the failure to adhere to the hearing on a substitution of all judges of the 12th Judicial Circuit by a Judge not named in the motion to disqualify, this Court should not permit the amendment of the void judgment nunc pro tunc to stand. Certiorari should be granted to re-establish the general rule and principle that a state judiciary, must adhere to the statutory restraints and comply with the due process provisions required of them under clear and unambiguous language mandated by a statute requiring specific procedural steps to be followed. Petitioner was deprived of a fair hearing by a Judge not named in the motion to disqualify and was thereby deprived of due process under 735 ILCS 5/2-1001 a (3) iii. This will result in Petitioner's loss of her right to the property. It would be inequitable to allow this to occur without a fair hearing being provided by any court.

CONCLUSION

Petitioner asks this Court to grant certiorari because of the lower court's failure to follow the statutory requirement of having a hearing on a Motion to Disqualify heard by a different judge not named in the motion to disqualify.

Petitioner asks this Court to grant certiorari to review the parameters by which a judgment nunc pro tunc my be amended by a different judge other than the original judge that had entered the judgment without any evidence or testimony that the judgment was anything other than the one intended to be entered.

Petitioner also asks this Court to grant certiorari to review the inequity of disallowing a litigant to set aside a judgment and enter an answer based on evidence withheld from the litigant's knowledge before the judgment was entered.

Because of the foregoing reasons, Plaintiffs request that the Court grant the Petitioners' Petition for Writ of Certiorari.

Respectfully submitted,

Janine L. Bally
126 Inner Ct.
New Lenox, IL 60451
815/485-8973

Pro Se

APPENDIX A

SUPREME COURT OF ILLINOIS

No. 101877

[Filed March 29, 2006]

Bank One, N.A.,	)
	)
Respondent,	)
	)
v.	)
	)
Janine L. Bally,	)
	)
Petitioner.	)
	)

OPINION

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on April 20, 2006.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
OTTAWA

Nos. 3-05-0057 & 3-05-0086

[Filed December 19, 2005]

BANK ONE, N.A.,	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
JANINE L. BALLY,	)
	)
Defendant-Appellant,	)
	)
and FIRST MIDWEST BANK & TRUST #6292, n/k/a First Midwest Trust Co., as Trustee under Trust Agreement dated June 26, 1998, and known as Trust No. 6292,	)
	)
Defendant.	)
	)

At a term of the Appellate Court, begun and held at Ottawa, on the 1st Day of January in the year of our Lord

Two thousand five, within and for the Third District of Illinois:

Present -

HONORABLE KENT SLATER, Presiding Justice X

HONORABLE DANIEL L. SCHMIDT, Justice

HONORABLE TOBIAS G. BARRY, Justice X

HONORABLE TOM M. LYTTON, Justice

HONORABLE MARY W. McDADE, Justice X

HONORABLE MARY K. O'BRIEN, Justice

HONORABLE WILLIAM E. HOLDRIDGE, Justice

GIST FLESHMAN, Clerk

BE IT REMEMBERED, that afterwards on December 19, 2005 the Summary Order of the Court was filed in the Clerk's Office of said Court, in the words and figures following viz:

IN THE APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

No. 3–05–0057
(Consolidated with No. 3–05–0086)

BANK ONE, N.A.,	)
	)
Plaintiff-Appellee,	)
	)
v.	)
	)
JANINE L. BALLY,	)
	)
Defendant-Appellant,	)
	)
and FIRST MIDWEST BANK & TRUST #6292, n/k/a First Midwest Trust Co., as Trustee under Trust Agreement dated June 26, 1998, and known as Trust No. 6292,	)
	)
Defendant.	)
	)

Appeal from the Circuit Court
of the 12th Judicial Circuit, Will County, Illinois
No. 02–CH–659
Honorable Richard J. Siegel, Judge, Presiding

SUMMARY ORDER

Plaintiff Bank One, N.A., brought a complaint to foreclose on property owned by defendants Janine L. Bally

and First Midwest Bank & Trust. Defendants failed to answer the complaint. On October 4, 2002, Will County Associate Judge Thomas A. Thanas granted Bank One's motions for default and summary judgment. On August 14, 2003, before the property was sold, Bally filed a motion to vacate and set aside judgment. Bank One then filed a motion to amend judgment nunc pro tunc to correct the property's legal description. Judge Thanas had left the bench, and the cause was assigned to Judge Richard J. Siegel. Bally filed a supplemental motion to set aside and sought leave to file an "amended answer, affirmative defenses and counterclaim." She then moved for substitution of judges for cause and for disqualification of all judges of the Twelfth Judicial Circuit. Ultimately, Bally's motions were denied, and Bank One's motion to amend judgment nunc pro tunc was granted.

Bally appeals. She argues that (1) the various judges ruling on motions in this case should have recused themselves because of an appearance of impropriety; (2) those same judges acted without authority when they denied her motions to substitute judges for cause; (3) the court's denial of her motion for relief from judgment was contrary to the manifest weight of the evidence; (4) the court abused its discretion when it denied her leave to "amend" her pleadings in response to the complaint; and (5) the court's grant of Bank One's motion to amend judgment nunc pro tunc was an abuse of discretion. We affirm.

In her first argument, Bally contends that, by virtue of their employment as judges of the Twelfth Judicial Circuit, all of the Will County judges had an interest in a pending federal suit brought by her and Michael Schneider against the county (*see Schneider v. County of Will*, 190 F. Supp. 2d 1082 (N.D. Ill. 2002)), and the judges should have disqualified themselves

pursuant to Supreme Court Rule 63(C) (1) (188 Ill. 2d R. 63 (C) (1)).

A judge has an ethical duty to disqualify himself or herself if his or her impartiality might reasonably be questioned, including instances where the judge knows that he or she has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis interest that could be substantially affected by the proceeding. 188 Ill. 2d R. 63(C) (1) (d). The fact that circuit judges have an employment relationship with the counties where they preside is not, without more, sufficient to establish judicial bias or warrant the judges' removal for cause. *People v. Saltzman*, 342 Ill. App. 3d 929, 796 N.E.2d 653 (2003).

In this case, Bally failed to establish facts from which the impartiality of any of the judges of the Twelfth Judicial Circuit could reasonably be questioned. The judges' economic interest in her suit against Will County was, at most, de minimis and could not have been substantially affected by the proceedings in this case. Accordingly, the trial court did not abuse its discretion in denying Bally's motion to disqualify all of the Will County judges pursuant to Rule 63(C) (1).

Bally further contends that all rulings entered during the pendency of motions for substitution of judge for cause were void because the rulings were made by judges named in her motions in violation of section 2--1001(a) (3) (iii) of the Civil Practice Law (735 ILCS 5/2--1001(a) (3) (iii) (West 2004)).

Section 2--1001 of the Civil Practice Law permits a litigant to petition for a substitution of judge for cause and provides that a hearing before a judge not named in the motion must be conducted as soon as possible. 735 ILCS 5/2--1001(a) (3) (West 2004). The statute is not, however, a

license to "judge shop" for a jurist favorable to the petitioner's cause. *In re Marriage of Peterson*, 319 Ill. App. 3d 325, 744 N.E.2d 877 (2001). A threshold requirement for obtaining a hearing before a judge not named in the petition is that the petitioner allege grounds that, taken as true, would show prejudice warranting transfer to a different judge. *Alcantar v. Peoples Gas Light and Coke Co.*, 288 Ill. App. 3d 644, 681 N.E.2d 993 (1997). On review, a decision denying a petition for substitution of judge will not be reversed unless the trial court's decision was contrary to the manifest weight of the evidence. *In re J.D.*, 332 Ill. App. 3d 395, 772 N.E.2d 927 (2002).

Here, Bally failed to make a threshold showing of prejudice that would justify granting her motions for substitution of judge. Accordingly, the trial court did not err in denying her motions without transferring the cause for a hearing before a judge from another circuit.

Next, Bally argues that the trial court erroneously denied her August 14, 2003, motion to vacate judgment pursuant to section 2--1401 of the Civil Practice Law (735 ILCS 5/2--1401 (West 2004)), because she had a meritorious defense and showed due diligence in presenting it. The "defense" she claims is based on an allegation that Bank One concealed its loss of the construction loan agreement that was a condition precedent to execution of mortgage and note documents, and she did not discover the alleged concealment until two weeks after the entry of judgment on October 4, 2002.

A section 2--1401 petition should be granted if the petition adequately establishes the existence of a meritorious defense, due diligence in presenting the defense in the original action and due diligence in filing the postjudgment petition. *Pirman v. A & M Cartage, Inc.*, 285 Ill. App. 3d 993, 674 N.E.2d

874 (1996). Here, even accepting Bally's allegations as true, they failed to establish that Bally had a meritorious defense to the foreclosure complaint. Bally has not shown that Bank One's alleged loss of a mortgage document relieved her of her indebtedness to the lender, nor has she shown that she exercised due diligence in filing the section 2--1401 petition. Accordingly, the court did not abuse its discretion in denying Bally's petition to vacate judgment.

Bally also argues that the trial court abused its discretion in denying her October 14, 2003, petition for leave to file an answer, affirmative defenses and a counterclaim pursuant to section 2--616 of the Civil Practice Law (735 ILCS 5/2--616 (West 2004)). This claim is without merit. Section 2--616 applies to amendments to existing pleadings. *McClure Engineering Ass'n., Inc. v. Winter*, 84 Ill. App. 3d 231, 405 N.E.2d 28 (1980). Bally failed to answer or otherwise plead in response to the original complaint before judgment was entered by Judge Thanas in October 2002. Her October 14, 2003, pleading did not amend any existing pleading. Accordingly, to obtain any relief from judgment in October 2003, Bally could not rely on section 2--616. *McClure*, 84 Ill. App. 3d 231, 405 N.E.2d 28. Rather, she had to satisfy the due diligence and meritorious defense elements of a section 2--1401 petition, which, as aforesaid, she failed to do.

Last, Bally asserts that the trial court erred by granting Bank One's petition to amend judgment nunc pro tunc. The purpose of nunc pro tunc orders is to correct clerical errors or matters of form so that the record reflects the actual order or judgment rendered by the court. *In re Marriage of Shelton*, 127 Ill. App. 3d 775, 469 N.E.2d 618 (1984). Incorrect legal descriptions of land constitute clerical errors where the record sufficiently establishes that the court intended to describe a parcel of land other than the land described in the judgment

or order. *Shelton*, 127 Ill. App. 3d 775, 469 N.E.2d 618. The documents of record here conclusively demonstrate that the property in question was situated in Will County, although the court's October 4, 2002, judgment for foreclosure and sale show Macoupin County. It is readily apparent that reference to Macoupin County in the judgment was a clerical error. Accordingly, the court did not err in granting Bank One's petition to amend nunc pro tunc.

The judgment of the circuit court of Will County is affirmed pursuant to Supreme Court Rule 23(c) (2), (7) and (8) (166 Ill. 2d R. 23 (c) (2), (7), (8)).

Affirmed.

SLATER, P.J., with McDADE and BARRY, J.J., concurring.

APPENDIX C

IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

No. 02-CH-659

[Filed January 13, 2005]

BANK ONE, N.A.,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JANINE L. BALLY and	)
FIRST MIDWEST BANK	)
& TRUST #6292	)
	)
Defendant.	)
	)

DECISION AND ORDER OF THE COURT

This matter came before the court on (1) Defendants' motion to vacate the order of default and to set aside the judgment entered on October 4, 2002; (2) Defendants' motion to vacate default and summary judgment, judgment of foreclosure and sale; and (3) Plaintiff's motion to amend judgment of foreclosure of August 25, 2003 nunc pro tunc. The court has reviewed the written motions, responses and

replies, and having heard oral argument, gave the parties an opportunity to supplement facts dealing with the court hearing of October 4, 2002. No such additional facts have been provided.

The Court finds that the defendants have failed to establish as a matter of law that they (1) have a meritorious cause of action or (2) proceeded with due diligence in presenting their defense or claim to Judge Thanas in Will County Circuit Court in the original action; two of three requirements to allow relief under 735 ILCS 5/2-1401.

See In re Marriage of Stufflebeam, 219 Ill.App.3d 923, (3rd Dist., 1996) appeal denied 171 Ill.2d 586. The burden of proof is clearly upon the movant in such an action; *see In re Marriage of Travlos,* 218 Ill.App.3d 1030 (1st Dist. 1991.)

First- the court finds that the Defendants' allegations of a defective original complaint, various breaches by the plaintiff of the loan agreement, defective notice, and inducement to abandon the property, are not sufficiently supported by the documents in the record so as to allow a finding that Defendants had a meritorious cause of action.

Secondly, while this court is cognizant of the fact that defendants proceeded "pro se" in the original action, this does not absolve defendants from their failure to respond in written fashion to the various dispositive motions filed by the plaintiffs[1]. *See Steinbrecher v. Steinbrecher,* 197 Ill.Dec. 514,

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[1] It should also be noted that the defendants in this matter are not without ability to represent themselves in court, as evidenced by the various post judgment pleadings and appeal documents filed in this case, the total of which measure approximately 8" in height.

528 (2001.) The court further finds that the procedural history and underlying facts of this case do not rise/sink to the level of being "unfair, unjust or unconscionable" which might trigger a vacation of the prior order based upon "substantial justice and fairness" as set forth in Lutz v. Lutz, 55 Ill.App.3d 967, citing *Elfman v. Evanston Bus,* 27 Ill.2d. 609, 613 (1963).

As to the issue of documents allegedly concealed by the plaintiffs, it appears that in fact the defendants had access to these documents and therefore cannot reasonably be considered to have been prejudiced in any way by the alleged failure of the defendants to turn over the same in discovery.

Proceeding to Plaintiff's motion to amend the legal description contained in the judgment of foreclosure and sale entered on October 4, 2002, the court finds that the amendment sought is in fact a correction of a clerical error which will not effect the judicial reasoning and/or determination of the original trial court.

For the reasons set forth above, the court hereby denies the motions of the defendant brought pursuant to 735 ILCS 5/2-1401 to vacate the prior rulings of Judge Thanas. The Court further grants the motion of the Plaintiff to amend Judge Thanas' prior order of foreclosure and sale dated October 4, 2002 nunc pro tunc.

DATED THIS 13th DAY OF JANUARY 2005.

ENTER /s/_____
RICHARD J. SIEGEL
CIRCUIT JUDGE

APPENDIX D

IN THE CIRCUIT COURT
OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

No. 02-CH-659

[Filed October 4, 2002]

BANK ONE, N.A.,	)
	)
Plaintiff,	)
	)
Vs.	)
	)
JANINE L. BALLY and FIRST	)
MIDWEST BANK & TRUST,	)
#6292 now known as First Midwest	)
Trust Company, as Trustee under	)
Trust Agreement dated	)
June 26, 1998 aka First Midwest	)
Trust Company, as Trustee under	)
Trust Agreement dated	)
June 26, 1998 and known as Trust	)
Number 6292,	)
	)
Defendants.	)
	)

ORDER

THIS CAUSE coming on to be heard on the Plaintiff's Motion for Summary Judgment, due notice having been given, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment is granted and that Summary Judgment is entered against the Defendant, Janine Bally.

ENTER: October 4, 2002

/s/_____
JUDGE

HEAVNER, HANDEGAN, SCOTT & BEYERS
Attorneys at Law
111 E. Main St., Suite 200
Decatur, IL 62525
(217) 422-1717

IN THE CIRCUIT COURT
OF THE 12TH JUDICIAL CIRCUIT
JOLIET, WILL COUNTY, ILLINOIS

No. 02-CH-659

[Filed October 4, 2002]

BANK ONE, N.A.,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JANINE L. BALLY and FIRST MIDWEST BANK & TRUST #6292, now known as First Midwest Trust Company, as Trustee under Trust Agreement dated June 26, 1998 aka First Midwest Trust Company as trustee under Trust Agreement dated June 26, 1998 and known as Trust Number 6292,	)
	)
Defendants.	)
	)

JUDGMENT OF FORECLOSURE AND SALE

On this day comes the Plaintiff, by its attorneys, Heavner, Handegan, Scott & Beyers, and it appearing to the Court that the Plaintiffs Complaint was filed herein; and the Defendant, Janine L. Bally was served with Summons on April 16, 2002 and has not filed an Answer; and the Defendant, First Midwest Bank & Trust #6292, now known as First Midwest

Trust Company, as Trustee under Trust Agreement dated June 26, 1998 aka First Midwest Trust Company, as Trustee under Trust Agreement dated June 26, 1998 and known as Trust Number 6292, was served with Summons on April 17, 2002 and has not filed an Answer; and it appearing that no fact in the Complaint is controverted; and that the prescribed Affidavit has been filed setting forth that the Defendants are not in the military service;

And the Plaintiff by its attorneys has filed a Motion that the Court enter a Judgment of Foreclosure and Sale in this cause and files with said Motion an Affidavit of Amount Due in support of said Motion, setting forth that as of **October 4, 2002**, there was due to the Plaintiff under the Note and Mortgage hereinafter described, the sum of **$78,664.34** and no objection being made to said Motion or Affidavit, the said Motion is allowed and Affidavit admitted into evidence in this cause;

And thereupon, the cause comes on to be heard upon the Plaintiffs Complaint and said Motion, Affidavits and Exhibits being introduced into evidence and the Court being fully advised in the premises, finds that the allegations contained in the Complaint herein are true, and that the Court has jurisdiction of the subject matter hereof and the parties hereto, and that the equities of this cause are with the Plaintiff, and the Court further finds as follows:

1. That on the 17th day of March, 1999, Janine L. Bally, borrowed from First Chicago NBD Mortgage Company, the sum of Eighty Seven Thousand Five Hundred Dollars ($87,500.00) and on said date did execute and deliver to said First Chicago NBD Mortgage Company, her certain note wherein she promised to pay to the order of First Chicago NBD Mortgage Company, the sum of Eighty Seven Thousand

Five Hundred Dollars ($87,500.00) together with interest as stipulated in said Note payments of Six Hundred Twenty Dollars and Forty Eight Cents ($620.48) on principal and interest to be payable monthly beginning the 1st day of May, 2000, and continuing on the 1st day of each month thereafter until the Note is fully paid, all of which will more fully appear by said Copy of Note herein admitted into evidence as Plaintiffs Exhibit "2".

2. To secure the payment of said Note, the said First Midwest Trust Company, as Trustee under Trust Agreement dated June 26, 1998 and known as Trust Number 6292, did on the 17th day of March, 1999 make, execute, deliver and acknowledge to said First Chicago NBD Mortgage Company, their certain Mortgage wherein they mortgaged to said First Chicago NBD Mortgage Company, the following described real estate, of which they were then seized as owners together with the improvements thereon and everything appertaining, to-wit:

> Part of the Northeast Quarter of Section 8, Township 12 North, Range 6 West, of the Third Principal Meridian, in Macoupin Countv, Illinois, being described as follows: Beginning at an iron pin at the Northwest Corner of Henrietta and Dean Streets in the City of Virden, said iron pin being 822 feet East and 30 feet North of an iron pipe at the center of Section 8; thence West 80.12 feet to an iron pin; thence North 178.82 feet to an iron pin; thence North 89 degrees 59 minutes 19 seconds East 80.12 feet to an iron pin; thence South 178.83 feet to the point of beginning. Situated in Macoupin County, Illinois.
>
> AND

Part of the Northeast Quarter of Section 8, Township 12 North, Range 6 West, of the Third Principal Meridian, in Macoupin County, Illinois, being described as follows: Commencing at an iron pin at the Northwest comer of Henrietta and Dean Streets in the City of Virden, said iron pin being 822 feet East and 30 feet North of an iron pipe at the center of Section 8; thence West 80.12 feet to an iron pin at the point of beginning; thence West 80.11 feet to an iron pin; thence North 178.80 feet to an iron pin; thence North 89 degrees 59 minutes 19 seconds East 80.11 feet to an iron pin; thence South 178.82 feet to the point of beginning. Situated in the County of Macoupin, State of Illinois.

Permanent Index Number: 08-000-275-00

Commonly Known as: 1200 Old New Lenox, Joliet, Illinois

subject to a condition of defeasance for the full and complete performance by them of the obligations and conditions created by said Note; that in and by said Mortgage, the said First Midwest Trust Company, as Trustee under Trust Agreement dated June 26, 1998 and known as Trust Number 6292, released and waived all rights and benefits under the Homestead Exemption Laws of the State of Illinois; that said Mortgage was, on the 23rd day of March, 1999, duly filed for record in the Office of the Recorder of

APPENDIX E

Fifth Amendment To The United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment To The United States Constitution

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

735 ILCS 5/2-616 (irrelevant language omitted)

a) At any time before final judgment amendments may be allowed on just and reasonable terms, ...changing the ...defense or adding new...defenses, and in any matter, either in form or substance, in any process, pleadings, bill of

particulars or proceedings, which may enable ....the defendant to make a defense or assert a cross claim.

b) The ...defense set up in any amended pleading shall not be barred by lapse of time under any statute or contract prescribing or limiting the time within which an action may be brought or right asserted, if the time prescribed or limited had not expired when the original pleading was filed, and if it shall appear from the original and amended pleadings that ....the defense or cross claim interposed in the amended pleading grew out of the same transaction or occurrence set up in the original pleading, even though the original pleading was defective in that it failed to allege the performance of some act or the existence of some fact or some other matter which is a necessary condition precedent to the right of recovery or defense asserted, if the condition precedent has in fact been performed, and for the purpose of preserving the ....cross claim or defense set up in the amended pleading, and for that purpose only, an amendment to any pleading shall be held to relate back to the date of the filing of the original pleading so amended.

c) A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon the terms as to costs and continuance that may be just.

735 ILCS 5/2-1001 (a) (3) iii

(a) A substitution of judge in any civil action may be had in the following situations:

(3) Substitution for cause. When cause exists.

(iii) Upon filing of a petition for substitution of judge for cause, a hearing to determine

whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition.

735 ILCS 5/2-1401

Relief from judgments. (a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of Error coram nobis and coram nobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided .....(irrelevant language omitted).....(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to matters not of record. All parties to the petition shall be notified as provided by rule. (c) ....(irrelevant language omitted).....(d) The filing of a petition under this Section does not affect the order or judgment, or suspend its operation. (e) Unless lack of jurisdiction affirmatively appears from the record proper, the vacation or modification of an order or judgment pursuant to the provisions of this Section does not affect the right, title or interest in or to any real or personal property of any person not a party to the original action, acquired for value after the entry of the order or judgment but before the filing of the petition, nor affect any rights of any person not a party to the original action under any certificate of sale issued before the filing of the petition, pursuant to a sale based on the order or judgment. (f) Nothing contained in this Section affects any

existing right to relief from a void order or judgment, or to employ any existing method to procure that relief.

735 ILCS 5/15 1603 c (1) (all irrelevant language of preceding sections omitted)

Redemption. (c) (1) Once expired, the right of redemption provided for in Section 15-1603 or 15-1604 shall not be revived. The period within which the right of redemption provided for in Sections 15-1603 and 15-1604 may be exercised, runs independently of any action by any person to enforce the judgment of foreclosure or effect a sale pursuant thereto. Neither the initiation of any legal proceeding nor the order of any court staying the enforcement of a judgment of foreclosure or the sale pursuant to a judgment or the confirmation of the sale, shall have the effect of tolling the running of the redemption period. (2) If a court has the authority to stay, and does stay, the running of the redemption period, or if the redemption period is extended by any statute of the United States, the redemption period shall be extended until the expiration of the same number of days after the expiration of the stay order as the number of days remaining in the redemption period at the time the stay order became effective, or, if later, until the expiration of 30 days after the stay order terminates. If the stay order terminates more than 30 days prior to the expiration of the redemption period, the redemption period shall not be extended.